

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.478 of 2001.

Judgment reserved on 29.12.2006.

Date of decision 4.1.2007

H.P.S.I.D.C. Petitioner.

Versus

Pawan Kumar Respondent.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?¹ Yes.

For the Petitioner(s): Mr.Ajay Kumar, Advocate.

For the Respondents: Mr. K.D.Sood, Advocate.

Dev Darshan Sud, J.

The petitioner has challenged the award passed by the learned Labour Court - cum - Industrial Tribunal in Reference No. 62 of 1997, on 16.3.2001, whereby the reference has been answered in favour of the workmen and they have been ordered to be reinstated with 20% back-wages. By another writ petition, being CWP 847

¹ *Whether reports of Local Papers may be allowed to see the judgment?* Yes.

of 2001, the workman challenged the award where the full benefit of back-wages was denied to him.

The brief facts of the case are that a complaint was made by the respondents that they had been employed as daily wage beldars from 1.8.1994 and 1.10.1993 in which capacity they continued to work till 30.4.1995. The gravaman of the respondents grievance was that their services had been dispensed with without following the procedure prescribed by Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Reference under Section 10 of the Act was made to the learned Industrial Tribunal, and the following issue was framed on 27.8.1997:

Whether the termination of the services of the petitioners ordered by the respondents is violative of Section 25-F of the Act on the grounds as alleged?

The learned Labour Court recorded evidence and found as a matter of fact that the respondents had put in more than 240 days of service and the defense put forth by the

petitioner management to the effect that they had abandoned services could not be accepted.

Learned counsel appearing on behalf of the petitioner has assailed the award on number grounds including the ground of perversity of finding recorded by the learned Labour Court.

Before discussing the case of the petitioner on merits, a reference may be made to the judgment of the Hon'ble Supreme Court of India in Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and another (2004) 4 SCC 245. This Court while exercising jurisdiction under Article 226 of the Constitution of India is prohibited from re-appreciating the evidence and drawing conclusions on its own on pure questions of fact. Further writ proceedings cannot be converted to an appeal. Paragraphs 17 and 20 of the judgment are relevant and are reproduced hereunder:

"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions

of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge

and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal."

The Hon'ble Supreme Court in P.G.I. of Medical Education & Research, Chandigarh versus Raj Kumar, (2001) 2 SCC 54) has held: findings of fact based on mis-appreciation of evidence would

be deemed to be an error of law which can be corrected by a writ of certiorari. The Court further observed that it is by now well settled that the findings of fact concluded by the Labour Court cannot be challenged in writ proceedings on the ground that relevant material evidence adduced before the Court was sufficient or inadequate. It is only perversity in the order which would warrant the intervention of this Court. While disposing of the petition, their Lordships were pleased to refer to the decision of that Court in *Syed Yakoob v. K.S.Radhakrishnan* (AIR 1964 SC 477). Hon'ble Supreme Court held:

".....The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to

the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in *Syed Yakoob v. K.S.Radhakrishnan*."

Similarly in Management of Madurantakam Coop. Sugar Mills Ltd. Versus S.Viswanathan (2005) 3 SCC 193, the Hon'ble Supreme Court held:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In

the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court

13. The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of

evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge."

Learned counsel has been unable to point out the perversity in the appreciation of the evidence considered by the learned Court below in reaching the conclusion that the termination of the respondents was contrary to the provisions of Section 25-F of the Industrial Disputes Act. The submission of the learned counsel was that all the witnesses on behalf of the respondents have stated that the respondents were offered employment but they did not accept the offer. In such circumstances, there could be no other inference except that the respondents had abandoned the job. I cannot persuade myself to accept this contention even after reappreciating the evidence. When the evidence is considered as a whole, there can be no other conclusion except the one reached by the learned Labour Court. I do not find any perversity in the award, nor do I find any irregularity or illegality in the judgment of the learned Court

below which would warrant interference under Article 226.

Learned counsel for the petitioner has drawn my attention to the evidence to support his contention that the learned Court below has mis-read and mis-appreciated the evidence which constituted a ground for interference under Article 226. According to him, all the witnesses produced by the petitioner before the learned Labour Court, were unanimous in their deposition that the respondents had abandoned the work. It was submitted that in this light, the award be quashed and set aside. I do not find any such perversity either in the appreciation of evidence or the conclusions drawn therefrom. It would be impermissible for me, sitting in exercise of jurisdiction under Article 226, to reappraise the evidence and to come to a different conclusion from the one reached by the learned Labour Court. The learned Labour Court has considered and appreciated the evidence in detail in paragraphs 8 and 9 of the judgment. I do not see any reason to differ with the conclusion arrived at by the learned Court below. The claim

of Chanan Singh has been rightly rejected. Moreover, the task of appreciating and reappreciating evidence cannot be performed by this Court exercising writ jurisdiction. I do not find that this case is one which merits interference under Article 226.

The writ petition is accordingly dismissed. There shall be no order as to costs.

January 4, 2006.
PC.

(Dev Darshan Sud) ,
Judge.